

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BANK OF THE WEST,

Plaintiff,

v.

GREAT FALLS LIMITED  
PARTNERSHIP, et al.,

Defendants.

2:09-CV-388 JCM (RJJ)

**ORDER**

Presently before the court is defendants Great Falls Limited Partnership (hereinafter “GFLP”), RVS Southwest, LLC, Todd Slusher, Joyce Slusher, and Roland V. Strum’s motion for reconsideration. (Doc. # 51). Plaintiff Bank of the West filed an opposition. (Doc. #55). Defendants filed a reply. (Doc. #58).

On July 29, 2010, the court entered an order (doc. #49) granting the plaintiff’s motion for summary judgment, and denying defendants’ cross-motion for summary judgment. The clerk of the court entered judgment in favor of the plaintiff in the amount of \$8,466,406.96, plus attorneys’ fees, expenses, costs, and interest. Defendants bring the present motion to ask the court to reconsider its judgment with regards to the personal liability of defendant Joyce Slusher, and alter or amend the principal amount due under the loan.

“Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th

1 Cir. 1993); *see* Fed. R. Civ. P. 59(e); *see also* Fed. R. Civ. P. 60(b). Under Fed. R. Civ. P. 59(e), the  
 2 court may alter or amend a judgment if the party provides the court with a valid ground for  
 3 reconsideration. *MGIC Indemnity Corp. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986).

4 **Defendant Joyce Slusher's Personal Liability.**

5 Defendants assert that the court committed clear error, and that it should amend the judgment  
 6 to alleviate Joyce's liability in order to prevent manifest injustice. They claim that she, as a general  
 7 partner, is not personally liable for the debt or liability of GFLP, a "registered limited-liability  
 8 partnership." Further, they assert that the court's judgment "contradicts Nevada law." Specifically,  
 9 defendants assert that under NRS 88.608, a "general partner is not personally liable for a debt or  
 10 liability of the limited-liability limited partnership unless the certificate of limited partnership or  
 11 partnership agreement provides otherwise." [emphasis supplied]. Asserting that Joyce never executed  
 12 a continuing guaranty in her individual capacity, defendants state that she is not liable for the  
 13 judgment entered against GFLP, and that it should be amended to relieve Joyce of any obligation.

14 In opposition, plaintiff correctly states that GFLP is a limited partnership<sup>1</sup>, and not a limited-  
 15 liability partnership. Unlike the general partners of a limited-liability partnership, those of a limited  
 16 partnership are jointly and severally liable for all debts and obligations of the partnership. NRS  
 17 87.150.

18 Despite the evidence that Joyce is liable as a general partner, the defendants still assert that  
 19 she should not be held liable because "it was the understanding that everything in relation to the  
 20 management and operations of GFLP would be handled exclusively by [her husband] Todd," and  
 21 that the partnership was formed with that in mind. Further, they assert that in situations like the  
 22 present, the "form of an entity will be ignored and the rights and liabilities should be determined in  
 23 furtherance and in harmony with the real purpose of the organization. *See e.g., Clark v. Lubritz*, 133  
 24 Nev. 1089, 1094, 944 P.2d 861, 964 (1997)." Thus, the defendants claim that equity requires that  
 25 Joyce should only be held liable in accordance with the intent of GFLP regardless of its structural

---

26  
 27 <sup>1</sup>The "Articles of Limited Partnership of Great Falls Limited Partnership" and the "Certificate  
 28 of Limited Partnership" attached as exhibits 1 & 2 to the defendants' response confirm this assertion.

1 form.

2 Pursuant to *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1029 (9th Cir.  
3 2001), a court need not consider issues or evidence not brought to the court's attention in opposition  
4 to a motion for summary judgment. Defendant Joyce's lack of involvement with the partnership's  
5 operations, and the fact that she "did not execute any of the continuing guaranties in her individual  
6 capacity or on behalf of GFLP" was known to the defendants at the time of both the motion summary  
7 judgment and the cross-motion for summary judgment, and was even mentioned in their response  
8 to the motion for summary judgment (doc. #34). Yet, defendants failed to raise the issue with regards  
9 to Joyce's personal liability or assert their equity argument.

10 The facts argued in the motion are not "newly discovered," there is no evidence to support  
11 the allegation that the court committed clear error, and the defendants have failed to show that there  
12 is an intervening change in controlling law. Therefore, reconsideration is not appropriate.

13 **Alter or Amend the Principal Sum of the Judgment.**

14 In relying on *Jenkins v. Country of Riverside*, 398 F.3d 1093, 1094 n.2 (9th Cir. 2005), which  
15 holds that there are grounds for reconsideration when there is a need to correct a previous disposition  
16 that was clearly erroneous and would manifest injustice, the defendants ask this court to alter the  
17 judgment to reflect, what they assert to be, the correct principal sum. Plaintiff's complaint (doc. #1),  
18 and the subsequent judgment (doc. #50), state the principal sum due as \$8,446,406.96. Defendants  
19 claim that a payment was made under the loan on or about October 23, 2008, and that the current  
20 principal amount should be \$8,060, 259.76.

21 Plaintiff asserts in its opposition that the amount referenced in the judgment was comprised  
22 of (1) outstanding principal amount on the debt (\$8,060,259.76), (2) interest calculated through  
23 January 2009 (\$368,421.05), (3) legal fees, (4) the appraisal fee (\$5,285.00), and (5) the  
24 reconveyance fee (\$45.00). Thus, the plaintiff admits that the proper principal sum is in fact the  
25 amount that the defendants assert in their motion.

26 The judgment incorrectly states that the amount owed to the plaintiff is "\$8,466,406.96 *plus*  
27 attorneys' fees, expenses, costs and interest." (Doc. #50) [emphasis added]. The amount reflected  
28

1 in the judgment should be the undisputed principal sum of \$8,060,259.76, without the additional fees  
2 and costs already calculated in.

3 Accordingly,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendants Great Falls  
5 Limited Partnership, RVS Southwest, LLC, Todd Slusher, Joyce Slusher, and Roland V. Strum's  
6 motion for reconsideration (doc. # 51) be, and the same hereby is, DENIED with regards to Joyce  
7 Slusher's personal liability, and GRANTED with regards to the principal sum reflected in the  
8 judgment.

9 IT IS FURTHER ORDERED that the parties shall jointly prepare and submit an appropriate  
10 amended judgment reflecting the correct principal sum of \$8,060,259.76.

11 DATED November 17, 2010.

12  
13   
14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28